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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

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VON LESTER TAYLOR,

Petitioner,

v.

LARRY BENZON, Warden,

Respondent.

RESPONDENT'S OBJECTION TO  
TAYLOR'S LIST OF WITNESSES  
WHOSE TESTIMONY HE EXPECTS  
TO PRESENT BY DEPOSITION

Case No. 02:07-CV-00194 TC

District Judge Tena Campbell

Magistrate Judge Dustin B. Pead

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On February 17, 2018, Petitioner Taylor filed his PETITIONER'S LIST OF WITNESSES WHOSE TESTIMONY HE EXPECTS TO PRESENT BY DEPOSITION (Doc. 349). Taylor has listed seven (7) individuals whose testimony he expects to present by deposition. Respondent hereby objects to testimony being presented by deposition as to the following:

- (2) Terry Christiansen, deposition taken on January 7, 2015,
- (3) Joseph Offret, deposition taken on January 8, 2015, and
- (4) Robert Adkins, deposition taken on January 9, 2015.

These deposition transcripts do not satisfy the preconditions for admissibility of testimonial depositions. Rule 26(a)(3)(A)(ii), Federal Rules of Civil Procedure, permits a party to present witnesses by deposition. But rule 26(a)(3)(B) limits admissibility where a party objects that use of the deposition would violate rule 32(a), Federal Rules of Civil Procedure. Rule 32(a)(4) allows using depositions in lieu of live testimony only when the witness is unavailable because, for instance, he lives more than 100 miles from the place of the hearing or is ill. Taylor has not established that Mssrs. Christiansen, Offret, and Adkins are unavailable to testify in this hearing. Nor has Taylor listed Christiansen or Adkins as witnesses who could be impeached using their depositions. *See* Fed. R. Civ. P. 32(a)(2).

Respondent therefore respectfully requests that this Court deny Petitioner Taylor's request and prohibit him from presenting testimony by deposition in lieu of live testimony for Mssrs. Christiansen, Offret, and Adkins.

Dated this 3rd day of March 2018.

SEAN D. REYES  
UTAH ATTORNEY GENERAL

/s/ Erin Riley

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**CERTIFICATE OF SERVICE**

I hereby certify that on 3 March 2018, I electronically filed the foregoing RESPONDENT'S OBJECTION TO TAYLOR'S LIST OF WITNESSES WHOSE TESTIMONY HE EXPECTS TO PRESENT BY DEPOSITION with the Clerk of the Court using the CM/ECF system which sent notification of the filing to the following:

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